



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0344]

RIN 1625-AA00

Safety Zone; Piscataqua River Turning Basin Dredge Project, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish two temporary safety zones for the navigable waters of the Piscataqua River in Portsmouth Harbor. The first safety zone will be a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations. The second safety zone will be a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. The safety zones are necessary to protect persons and vessels from hazards associated with dredging, drilling, and blasting operations for overall widening of the uppermost turning basin of the Piscataqua River. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Northern New England or a Designated Representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0344 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Shaun Doyle, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207-347-5015, e-mail Shaun.T.Doyle@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port Northern New England

II. Background, Purpose, and Legal Basis

On February 12, 2021, the U.S. Army Corps of Engineers notified the Coast Guard of plans to fund dredging operations on the uppermost turning basin of the Piscataqua River in Portsmouth Harbor. The project consists of widening the uppermost turning basin of the Piscataqua River from 800 feet to 1200 feet to improve navigation maneuverability and safety.

The project includes dredging approximately 12 – 14 million cubic yards of silt, blue clay, till and weathered rock from the uppermost turning basin of the Piscataqua River in Portsmouth Harbor. The project will include mechanical dredging, drilling, and blasting operations. The extent of drilling and blasting operations will not be known until the top material has been removed and contractors can locate hard rock spots. The Captain of the Port Northern New England (COTP) has determined that potential hazards associated with dredging operations would be a safety concern for anyone within a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations. Additionally, the COTP has determined that potential hazards associated

with the explosives to be used in this operation would be a safety concern for anyone within a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. The Coast Guard is proposing this rule to be effective, and enforceable, from October 15, 2021, through April 15, 2022. If the project is completed prior to April 15, 2022, enforcement of the safety zone will be terminated and notice given via Broadcast Notice to Mariners, Local Notice to Mariners, or both.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations and within a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish two safety zones from October 15, 2021, through April 15, 2022. The first safety zone will be a 100-yard radius around any vessel, barge, or dredging equipment actively engaged in dredging operations. The second safety zone will be a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. The 500-yard safety zone will be enforced during active blasting operations and will be suspended once successful detonation has been confirmed and blasting operations have been secured. The Coast Guard will notify the public and local mariners of the 500-yard safety zone through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16 in advance of any enforcement. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, time-of-day and time-of-year of the safety zone. The safety zones will be enforced during periods of active dredging or blasting operations from October 15, 2021, through April 15, 2022. The 500-yard radius safety zone around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites will only be enforced when blasting operations are conducted for short durations. Once blasting operations have been secured, vessel traffic would be able to transit around the 100-yard radius safety zone around any vessel, barge, or dredging equipment actively engaged in dredging operations. Dredging vessel(s) conducting operations will accommodate necessary commerce and movement of cargo through daily coordination with U.S. Army Corps of Engineers, contractors, Portsmouth Pilots, and U.S. Coast Guard. Proper public notice of enforcement will be given through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made

a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing two safety zones near the uppermost turning basin of the Piscataqua River in Portsmouth Harbor that will be enforced periodically from October 15, 2021, through April 15, 2022, that prohibits entry within a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations, and within a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1.

2. Add § 165.T01-0344 to read as follows:

§ 165.T01-0344 Safety Zone; Piscataqua River Turning Basin Dredge Project, Portsmouth, NH

(a) *Locations.* The following areas are a safety zone: (1) *Safety zone 1.* All navigable waters of the Piscataqua River, from surface to bottom, within a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations.

(2) *Safety zone 2.* All navigable waters of the Piscataqua River, from surface to bottom, within a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites.

(b) *Definitions.* As used in this section, Designated Representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Northern New England (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's Designated Representative.

(2) To seek permission to enter, contact the COTP or the COTP's Designated Representative via VHF-FM marine channel 16 or by contacting the Coast Guard Sector Northern New England Command Center at (207) 741-5465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's Designated Representative.

(d) *Enforcement period.* This section is effective from October 15, 2021,

through April 15, 2022, but will only be enforced while dredging or blasting operations are in progress. The Coast Guard will utilize Broadcast Notice to Mariners and Local Notice to Mariners to notify the public of the time and duration that these safety zones will be enforced.

Dated: August 16, 2021.

A. E. Florentino,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Northern New England.
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